

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

GALVESTON DIVISION

ARNULFO MORENO GASCA #661726	§	
	§	
V.	§	CIVIL ACTION NO. G-04-437
	§	
DR. BEN RAIMER, ET AL.	§	

ORDER OF DISMISSAL

Before the Court for its Order of Acceptance is a Report and Recommendation of the United States Magistrate Judge, entered on November 22, 2005, which recommends that Defendants' Motion for Summary Judgment be granted and Plaintiff's claim of deliberate indifference to his serious medical needs be dismissed with prejudice. Plaintiff has filed objections to the Report and Recommendation, re-asserting his belief that the management and treatment of his Hepatitis-C infection was delayed and mismanaged by Defendants such that he suffered deliberate indifference to his serious medical needs. A review of Defendants' summary judgment motion reveals, however, that Plaintiff received all the medical treatment that his pre-existing medical condition could safely tolerate. Moreover, Defendants were successful in their attempt to have Plaintiff referred to a liver transplant program. Plaintiff's claim that any Defendant was deliberately indifferent to his serious medical needs is wholly without merit.

After *de novo* review pursuant to 28 U.S.C. §636 (b)(1)(C), this Court is of the opinion that the Report and Recommendation of the Magistrate Judge should be, and it is hereby, **ACCEPTED** in its entirety and incorporated by reference herein. It is the **ORDER** of this Court that Defendants'


Motion for Summary Judgment is **GRANTED** and this cause is **DISMISSED** with prejudice for failure to state a claim for which relief can be granted.

This Order does not release Plaintiff or the Texas Department of Criminal Justice, Institutions Division, from the obligation to pay the filing fee previously imposed.

Plaintiff is advised that if he appeals this dismissal, he will be required to pay the appeal fee of \$255.00 pursuant to the Prison Litigation Reform Act, and he must submit a 6-month certificate of his inmate trust account when he files his notice of appeal.

A certified copy of this Order shall be mailed to: **TDCJ-Office of the General Counsel**, P.O. Box 13084, Austin, Texas, 78711; and, to **TDCJ Local Funds Division**, P.O. Box 629, Huntsville, TX 77342-0629.

DONE at Galveston, Texas, this the 12th day of January, 2006.



Samuel B. Kent
United States District Judge